IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 92 OF 1985

Bhimrao Parashram Huddar
(since deceased by legal heirs),
(1) Shantabai Bhimrao Huddar & ors.
R/o Kurekundi, Tal. Chandgad,
Dist. Kolhapur. ... Appellant

V/s

Irrappa Mahadeo Takekar
(Since deceased by his heirs
and legal representatives)

1(A) Shri Mahadeo Irappa Takekar
& ors.
R/o Bukkihal, Tal. Chandgad,
Dist. Kolhapur. ... Respondents

Mr. Vineet B. Naik for the appellant.

Mr. G.N. Salunkhe for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 6TH JULY, 2005

ORAL JUDGMENT:

1. This appeal is preferred by the appellant against the judgment and order passed by the Assistant Judge, Kolhapur, dated 16.10.1994 dismissing the appeal with modifications in the order of the Trial Court but substantially confirming the decree passed by the Civil Judge, Jr.Divn., Chandgad, dated 29.8.1981.

2. I have heard the learned counsel for both parties. Perused the record.

3. The facts involved in the dispute in nutshell are thus -

The plaintiff and defendant No.2 were lawful tenants of disputed land. One Madhukar Vinayak Kulkarni and Govind Vinayak Kulkarni were the original owners of the suit land. Agricultural Land Tribunal (hereinafter referred as the A.L.T. in short), Chandgad had started tenancy proceeding under Sec. 32-G of the Bombay Tenancy and Agricultural Lands Act (hereinafter referred to as the B.T. & A.L. Act in short) in between the landlord himself and defendant No.2. In that case, A.L.T. Chandgad had ordered that the sale of the suit land is made effective in favour of the plaintiff and the defendant No.2. A.L.T. also fixed the purchase price of Rs.4,038/- and directed that each tenant should pay Rs.2,019/- in five instalments in Govt. Treasury. On 28.10.1967, A.L.T. declared the said judgment. Thereafter, Appar Tahsildar No.2, Tal. Chandgad again started proceeding under Sec.32-G/4/67 in respect of S.No.6. The Appar Tahasildar No.2 issued a sale

certificate under Sec.32-M in favour of the defendant No.1 on 31.3.1970. It is the case of the plaintiff that the A.L.T. had no right to reopen the case again and to issue certificate under Sec. 32-M in favour of the defendant No.1. On the basis of order dated 31.3.1970, defendant no.1 forcibly took the possession of the suit land and entered his name in 7x12 extract. Hence the defendant No.1 was sought to be the trespasser. Hence the plaintiff filed the suit for declaration and possession and also mesne profits.

4. Defendant No.1 contested the suit with contention that A.L.T. reopened the proceeding under Sec. 32-G on the application given by the plaintiff and after the enquiry A.L.T. issued sale certificate under Sec. 32-M of the B.T. & A.L. Act. It was further contended that he was tenant in the suit land prior to the year 1956-57 alongwith the plaintiff No.1. He himself and plaintiff having one half share each in the suit land and the defendant No.2 having one half share in the suit land. It was further contended that he was the tenant of 1/3 share of one half share of the plaintiff. It was further contended that the Court had no jurisdiction to declare the certificate under Sec.32-M issued by the A.L.T. and hence the Court had no jurisdiction to

entertain the suit.

5. On the basis of these pleadings, as the record shows, preliminary issue was framed regarding the jurisdiction of the Civil Court. It was adjudicated against the plaintiff. The plaintiff then preferred appeal against that finding. The appellate Court allowed the appeal of the plaintiff holding that the Civil Court had jurisdiction to try and entertain the proceeding and sought declaration and consequently remanded the matter to the Trial Court.

6. The Trial Court, heard both parties on merits and on the basis of available evidence, came to the conclusion that the plaintiff had proved that the order and decision of Tahsildar in Tenancy Case No. 32-G/4/67 dated 31.3.1970 was null and void and consequently the certificate issued under Sec.32-M of the B.T. & A.L. Act also was declared as illegal. It was further declared that the decision in that regard by the revenue authorities was without consideration and hence was not to be acted upon. It was further held that the plaintiff had proved that defendant No.1 had forcibly dispossessed him of the plaintiff’s share in the suit land and defendant No.1 was trespasser in the land and,

as such, he was held entitled for declaration as well as consequential relief of possession and mesne profit in respect of the said suit property and, as such, the suit came to be decreed.

7. The appeal was carried to the District Court, Kolhapur. The learned Assistant Judge, after hearing both parties and on the basis of available evidence, came to the conclusion that the appeal deserves to be dismissed. While doing so, he made minor modifications in the order passed by the lower court and disposed of the appeal. Hence the present appeal.

8. At the time of admission the learned admission Judge framed two substantial questions of law - (i) Whether the proceeding and judgment under Sec. 32-G of the B.T. & A.L. Act could be reopened by the same parties again in civil suit ? and (i) whether even Sec.85 would be applicable or not in the present case ?

9. At the outset, it may be noted that it is the case of the review of the order passed by the Tahsildar under Sec. 32-G of the B.T. & A.L. Act and the whole controversy centres around the issue to the effect that, whether such review power is explicite from the

provisions either under the B.T. & A.L. Act or under the Mamlatdars' Courts Act, 1906.

10. The learned counsel for the appellant took me through the judgments of both the Courts below and submitted that the proper course for the plaintiff was to prefer an appeal against the order dated 31.3.1970 and this Court has no jurisdiction to entertain the suit for declaration to the effect that the entire proceeding and consequent certificate under Sec. 32-M of the B.T. & A.L. Act was a nullity. It must be noted that initially the issue of jurisdiction was framed as preliminary issue and the lower appellate Court adjudicated the issue on merits in favour of the plaintiff holding that the Civil Court had jurisdiction and remanded the matter to the lower court and, therefore, prima facie, it is seen that the District Court had proceeded on the basis that Civil Court had jurisdiction. Be that as it may, we presently would go in the said issue of jurisdiction at later stage.

The learned counsel for th appellant vehemtnly urged that power of review was vested in the revenue authorities i.e. Tahsildar by virtue of provisions of Sec. 16 of the Mamlatdars' Courts Act as well as 32-G

of the B.T. & A.L. Act. In support of his submissions, reliance was sought to be put on the proviso to sub-Sec.3 of Sec.32-G, which provides that if such order is passed in default of the appearance of any party, the Tribunal shall communicate such order to the parties and any party on whose default the order was passed may, within 60 days from the date on which the order was communicated to him, apply for review of the same. Reliance was also put on the proviso to sub-sec. 2 of Sec. 16 of the Mamlatdars' Court Act which also provides that if either party satisfies Mamlatdar at any time within 30 days from the date of rejection of a plaint under sub-section (1) or of an ex-parte decision under sub-section (2), that he was prevented by some unavoidable circumstances from attending or from producing his documents or from adopting measures to procure the attendance of his witnesses, as the case may be, it shall be lawful for the Mamlatdar to issue a notice in the form of Schedule B at the expenses of the applicant to the opposite party and, if still satisfied after hearing the opposite party that the applicant was prevented as alleged, to re-hear the case at such time and place as he then may fix.

In my considered view, both these provisions are not at

all applicable to the present set of facts plainly due to the reason that the plaintiff was not party to the impugned suit proceeding at all. The pre-requisite of the proviso to Sec.32-G sub-section (3) of the B.T. & A.L. Act as well as Sec.16(2) proviso of the Mamlatdars' Courts Act is that the person applying for review has to be party to the proceeding and, therefore, in view of this aspect, the argument that the Tahsildar had the power to review his order is devoid of any merits.

11. The learned counsel for the appellant sought to put reliance on the ruling of the Single Judge (J.G.Chitre, J.) of this Court in the case of **Sadashiv Mahadeo Kumbhar v/s Balkrishna Bhikaji Walimbe & anr., reported in 2002 (4) Bom.C.R. 346,** wherein it was held thus -

> "The entire structure of Mamlatdars Courts Act, 1906 shows that, provisions of C.P.C. are to govern the procedures which are being conducted by Mamlatdars' Court. A specific provision has been made by providing the proviso to section 16 by which the Mamlatdars Court is empowered to set aside the ex-parte

> judgment and order passed against the opponent if reasonable cause is shown. It is to be noted that every care has been taken to make provisions for equipping Mamlatdars' Court to deal with the applications or lis presented before it in the permissible nature which includes passing of judgment and order and reaching its final goal of implementation or execution. They are parallel to Civil Procedure Code. Therefore, by Rule of *ejusdem generis,* it will have to be held that Mamlatdars' Courts are empowered to exercise the right of review of its order also if it is necessary to do so in the interest of justice."

With due respect, I prefer to disagree with this proposition that the provisions of the C.P.C. would govern the procedures which are to be adopted by the Tahsildar under the Mamlatdars' Courts Act, 1906. If we peruse the entire scheme of the Mamlatdars' Courts Act, 1906, it is plain enough to see that the entire Act is Code by itself embodied with specific procedure to be adopted by Tahsildar while conducting the procedings

under the said provisions of the Act. In other words, it would be wrong to hold that the provisions of C.P.C. either are applicable or govern the acts of the revenue authorities under the Mamlatdars' Courts Act. It is also observed by the learned single Judge in his judgment that the procedure in the Mamlatdars' Courts Act is "parallel to Civil Procedure Code". This statement again, with due respect, cannot be accepted for the reason noted earlier, namely, the Mamlatdars' Courts Act is the Code by itself and definitely is seen to be not parallel to the C.P.C. at all and, therefore, the Rule of *ejusdem generis* will not be applicable to the present case. The learned Single Judge has made these observations in order to held that the Tahsildar under the Mamlatdars' Courts Act has powers to review his own order. However, I have already noted that the power to review are limited which are vested only under the proviso of Sec. 16 of the Mamlatdars' Courts Act and both the proviso and powers thereunder of Tahsildar are not applicable to the present case and, therefore, I hold that the Tahsildar had absolutely no power to review his own order.

12. The next question which was sought to be raised was regarding the jurisdiction of the Civil Court. In that regard, the learned counsel for the respondent put

reliance on the ruling of the Single Judge of this Court in the case of **Madhav Kesu Khuspe v/s Sundrabai Mugutrao Phadatare, reported in 1978 Mh.L.J. 289.** It is held by the learned single Judge that,

> "Merely because a statute bars the jurisdiction of the Civil Court, it does not mean that for all purposes the jurisdiction of the Civil Court is taken away. The power of the Civil Court to examine cases where the provisions of the Act have not been complied with or the Statutory Tribunal has not acted in confirmity with the principles of judicial procedure or natural justice remains unaffected."

In the present case before us, as observed by the Trial Court, it is clear under the provisions of Sec. 32-I of the B.T. & A.L. Act under which, it is provided that all tenants who under Sec.32 are deemed to have purchased the land, then there must be an enquiry, if the plaintiff was a permanent tenant and defendant was sub-tenant, the notice must be issued to the landlord. His statement is required to be recorded and then sale certificate is required to be issued in his favour. In other words, there is distinct procedure which is mandatory for the

enquiry before issuing certificate under Sec. 32-M of the B.T. & A.L. Act. In **Madhav Kesu Khuspe's** case (Supra), this Court has observed that,

> "It is the duty of the Tribunal to fulfil all formalities of Sec. 32-G of the B.T. & A.L. Act. It is not optional but imperative for the Tribunal to give public notice and serve notices individually on the tenant, his landlord and other persons interested in the land and to record the statement of the tenant himself whether he is willing to purchase the land or not. The provisions of Sec. 32-G are mandatory."

Reliance was also put on the Apex Court ruling in the case of **Shiv Kumar Chadha v/s Municipal Corporation of Delhi & ors., reported in (1993) 3 SCC 161,** of which ratio was to the effect that, Court's jurisdiction to go into the question whether the order was a nullity being vitiated by jurisdiction, jurisdictional error is not barred. In view of these aspects and taking into consideration the factual matrix of the case, I am satisfied that the civil Court had jurisdiction to go into the issues involved and has rightly exercised such

jurisdiction by both the Courts below and, therefore, it would brook no interference.

13. It may be noted that the learned counsel for the appellant also sought to raise various questions pertaining to the dispute involved. However, I am satisfied that those are not substantial questions of law but relate to the factual aspects which need not be taken into account at the time of final hearing of the second appeal.

14. In the result, I hold that the judgment and order passed by the lower appellate court confirming the judgment and order passed by the Trial Court is legal, valid and proper and, therefore, it would brook no interference.

In the result, the appeal stands dismissed. In the circumstances, there shall not be any order as to costs.

15. At this stage, the learned counsel for the appellant made prayer for stay of this order. In view of the facts and circumstances, the order stands stayed for a period of six weeks.

C.c. expedited.

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